

ST 13-0024-GIL 05/28/2013 SERVICE OCCUPATION TAX

If no tangible personal property is transferred to the customer, then no Illinois Retailers' Occupation Tax or Service Occupation Tax would apply. See 86 Ill. Adm. Code Parts 130 and 140. (This is a GIL.)

May 28, 2013

Dear:

This letter is in response to your letter dated January 3, 2013, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We respectfully request a written opinion regarding whether or not a Taxpayer is required to collect sales and use tax for charges it itemizes on its invoices. We believe these items are incidental components used in the process of providing its primary business service to customers in the State of Illinois, rather than sales to its customers.

Taxpayer is a transportation company offering intermodal trucking services to its customers. Based on Illinois Regulation 140-101, we believe that Taxpayer's sales are non-taxable and that the items listed below are not separate sales, but are instead but necessary parts of the intermodal trucking services offered, and therefore not subject to sales and use tax. We respectfully request an opinion as to the validity of our interpretation and have the following questions:

1. Please confirm that Taxpayers services are non-taxable.
2. During periods where the customer requires a delay or wait time in the transportation process and the product is sitting at a rail yard, Taxpayer is charged a storage fee by the rail yard. Taxpayer in turn charges the customer for this storage fee so that it can be reimbursed for the expense. Taxpayer is not a storage company nor is it in the business of selling or providing storage. This is only provided in conjunction with the transportation services and only when Taxpayer is charged for storage and we therefore believe this is non-taxable. Is Taxpayer considered responsible for collecting sales tax for storage of intermodal cargo containers until such time as the end customer can take delivery?
3. When a chassis is required (framework required to hold the intermodal container holding cargo) Taxpayer makes a separate charge for the chassis. The chassis is not transferred to the customer and the customer has no care,

custody, or control over the chassis. It is used by Taxpayer to provide the transportation service. We do not believe this is a taxable charge to Taxpayer's customer because the chassis is used by Taxpayer and the customer never takes any possession or control of the chassis. Is Taxpayer considered responsible for collecting sales tax on the charge for the chassis?

4. Taxpayer charges for the fuel expenses as a separate line item. This is not fuel that is sold to the customer but is fuel that is used and consumed by Taxpayer while providing the transportation service and we therefore believe this charge to Taxpayer's customer is non-taxable. Is Taxpayer considered responsible for collecting sales tax on these charges for fuel used in moving intermodal containers?

Please let us know if we can provide more information to assist in determination of this matter. If we are incorrect, please provide an explanation as to why these services incidental to the intermodal transportation of cargo would not qualify as non-taxable.

You can contact me at XXXX if you have any questions.

**DEPARTMENT'S RESPONSE:**

Retailers' Occupation and Use Taxes do not apply to sales of service. The Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. However, if no tangible personal property is transferred incident to a sale of service, the Service Occupation Tax and Service Use Tax do not apply.

If the transactions you are inquiring about do not involve the transfer of any tangible personal property to the customer, then they generally would not be subject to Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M. Boggess  
Associate Counsel